

Number _____

Supreme Court, U.S.

FILED

AUG 4 1989

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1989 TERM

RICHARD SIEGEL,
Petitioner

v.

THE EDMONDS CO., INC. PROFIT SHARING PLAN, et al.,
Respondents

On Writ of Certiorari
To THE UNITED STATES COURT OF APPEALS
For the Third Circuit

PETITION FOR CERTIORARI

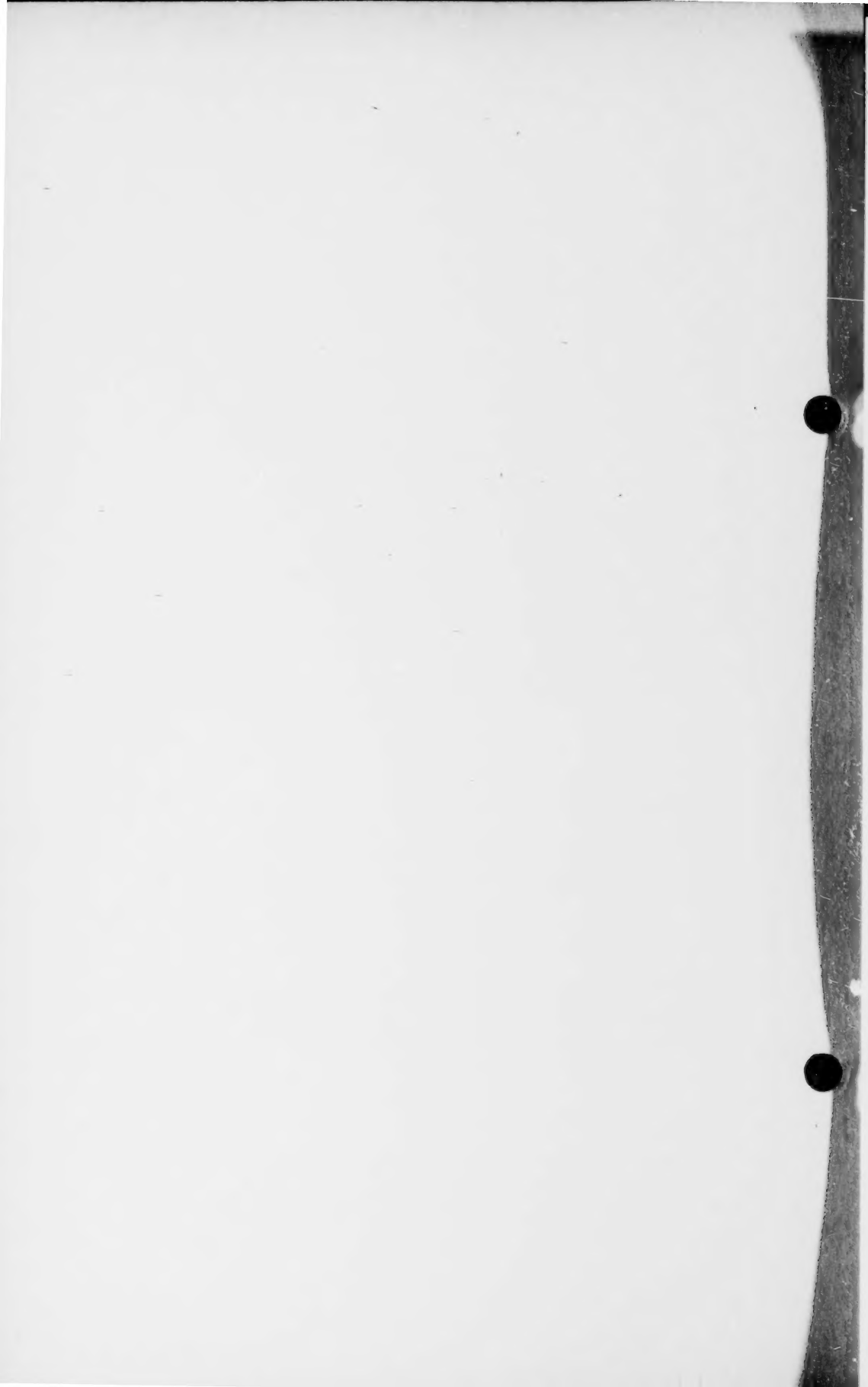
Counsel for Petitioner: Pro Se

RICHARD SIEGEL
717 Lawn Ave.
Sellersville, Pa. 18960
215-257-1526



THE QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals sanction the District Court's departure from accepted judicial procedure in denying due process of law to petitioner?
2. Did the Court of Appeals sanction the District Court's departure from accepted judicial procedure in utilizing summary judgment?
3. Did the Court of Appeals sanction the District Court's departure from accepted judicial procedure in failing to reach ERISA issues?
4. Was there a lawful assessment of the penalty attempted to be collected by the levy?
5. Is there a valid distinction between a penalty and a tax?

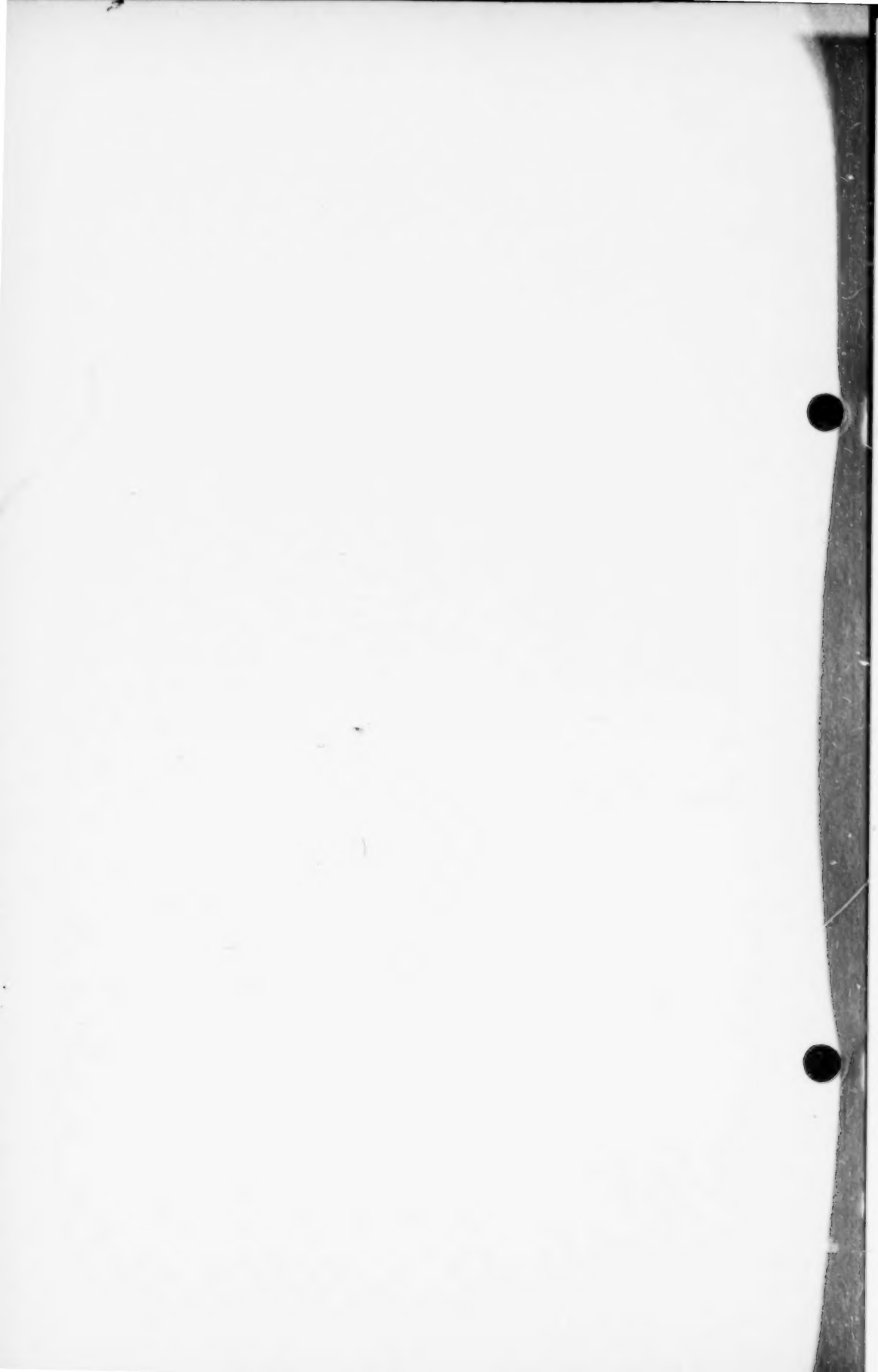


6. Did the Court of Appeals sanction the District Court's departure from accepted judicial procedure in honoring an unlawful and erroneous Notice of Levy?
7. Did the defendants have the standing to respond to the levy?
8. Were there errors on the face of the levy?
9. Did the Court of Appeals err by sanctioning the District Court's grant of immunity from prosecution by a non-delinquent?
10. Were "subjects of levy," "property subject to levy," and "capacities" of addressees of the levy interpreted correctly by the District Court?
11. Did property or obligations exist at the time of the levy that were subject to levy and upon which levy was made?

12. Does an unlawful levy have authority to override ERISA protections against unlawful alienation of profit sharing funds?
13. Is it error to grant immunity to a non-subject of a levy, or to a person not under the authority of a subject of levy?
14. Is the Social Security Act constitutional?
15. Does a statute containing vagueness have clear jurisdiction over an individual whose status is referred to in Q. 25, below?
16. Are irredeemable notes property? or do they convey rights to property?
17. Does ERISA fall under the jurisdiction of equity?
18. Does a Notice of Levy relieve fiduciaries of their ERISA-mandated

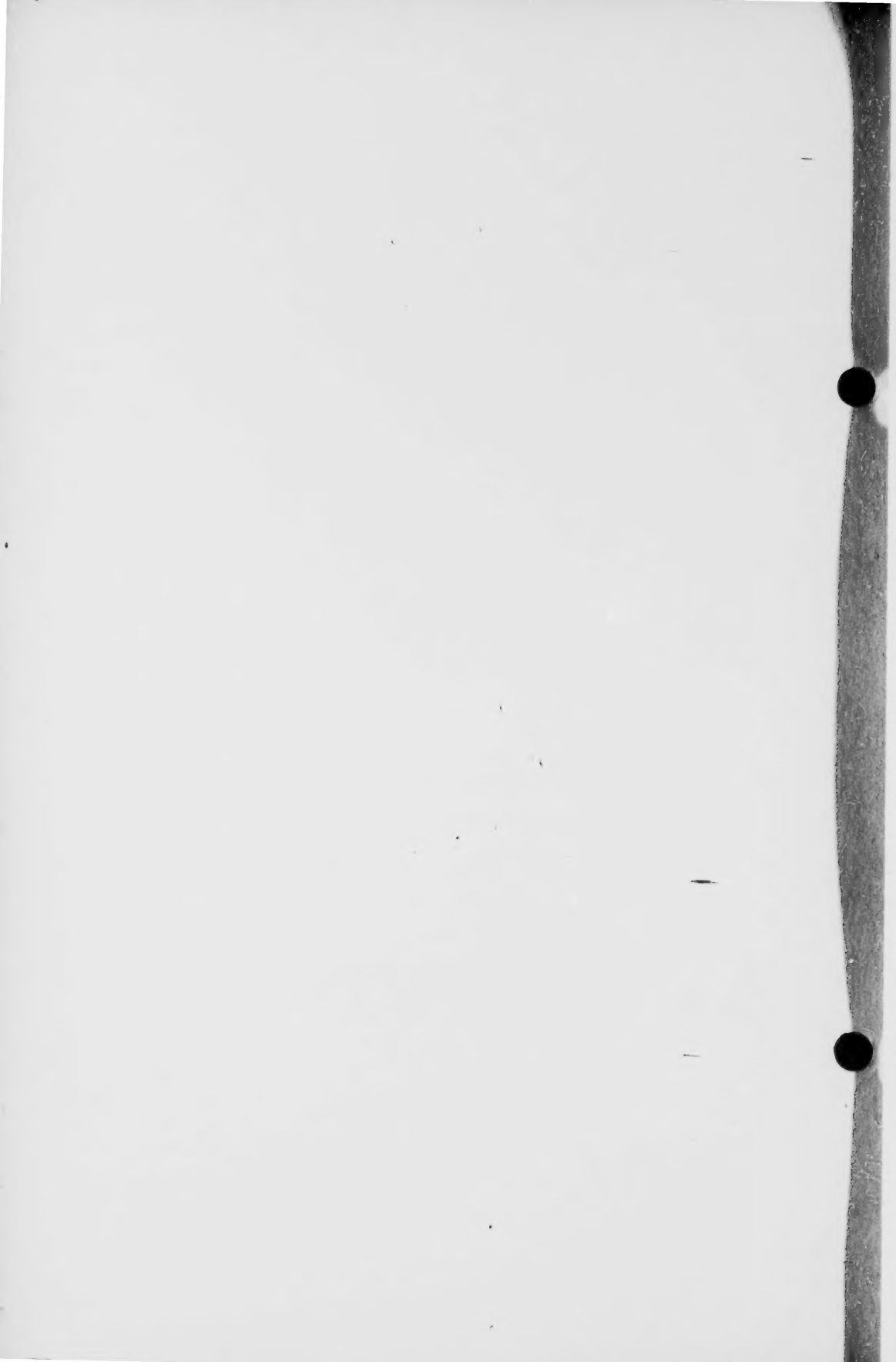
responsibilities, where fiduciaries have personal knowledge of errors and inequities associated with the levy?

19. Were petitioner's ERISA rights violated?
20. May a corporation lawfully use fraud and duress to obtain withholding certificates? (I.e., do 5th Amendment protections apply to withholding?)
21. Are withholding certificates obtained under duress admissible as evidence?
22. Is employer fraud permissible under ERISA?
23. Was the 16th Amendment lawfully ratified?
24. May a corporation obtain withholding certificates from its employees under any other circumstances than those set forth in the Federal Register?
25. Does the petitioner have the status of an individual, as distinguished



from a corporation, and as being outside of the Social Security system?

26. Do the court orders in this case contradict the principles of Phillips v. Commissioner, 283 U.S. 589, 596, regarding the justification for administrative levies?
27. Do the court orders in this case contradict the doctrine of Pollock v. Farmers' Loan, 158 U.S. 601?
28. Do the court orders in this case contradict Evans v. Gore, 253 U.S. 245?
29. Does Massachusetts Mut. Life Insur. Co. v. Russell, 473 U.S. 134, preclude the awarding of punitive and extra-contractual damages under ERISA, Sec. 502 (a) (3) in the present case?
30. Do the defendants and the courts have the right to dishonor the petitioner's status under Hale v. Henkel, 201 U.S. 43?



31. Does the denial of due process of law
in this case contradict the holdings of
Davis v. Scherer, 468 U.S. 183?



TABLE OF CONTENTS

| | |
|--|-----|
| Questions Presented for Review | 1 |
| Parties | 7 |
| Reports of Opinions | 8 |
| Grounds of Jurisdiction | 9 |
| Constitutional Provisions, Statutes, and Regulations | 10 |
| Statement of Case | 15 |
| Basis for Original Jurisdiction of the U.S. District Court | 19 |
| Reasons for Granting this Petition | 20 |
| I Issues of Procedure | 21 |
| II The Issue of the Penalty | 23 |
| III The Levy | 24 |
| IV Acts of Congress | 26 |
| V Constitutional Issues | 28 |
| VI Issues of Fraud | 29 |
| VII Status | 32 |
| VIII Applicable Supreme Court Decisions Contradicted | 33 |
| APPENDIX: | |
| U.S. District Court, E.D., Pa.: Memorandum and Order, Jan. 19, 1988 | A-1 |
| U.S. District Court, E.D., Pa.: Order, Feb. 2, 1989 | A-7 |
| U.S. Court of Appeals, 3d Circuit: Order, June 14, 1989 | A-8 |
| Petitioner's Social Security Recision Document | A-9 |

TABLE OF CONTENTS

APPENDIX (continued)

| | |
|--|------|
| Statement Pursuant to Rule 28.4.(b) | A-11 |
| Certificate of Service on Respondents | A-12 |
| Certificate of Service on Department of Justice | A-13 |

TABLE OF AUTHORITIES

U.S. Constitution

| | |
|-----------------|------------------|
| Preamble | 10 |
| Art. I, Sec. 8 | 10 |
| Art. I, Sec. 9 | 10 |
| Art. I, Sec. 10 | 10 |
| Art. V | 11 |
| Amend. I | 11 |
| Amend. V | 1, 4, 11, 17, 28 |
| Amend. XIII | 12, 29 |
| Amend. XVI | 12, 30 |

| | |
|-------------------------|---|
| 28 U.S.C., Sec. 2101(c) | 9 |
|-------------------------|---|

| | |
|---------------------|-------|
| Social Security Act | 12, 3 |
|---------------------|-------|

| | |
|-------|--|
| ERISA | 1, 3, 4, 5, 12, 16, 19, 22, 25, 27, 28, 31, 34, A-2, A-6 |
|-------|--|

I.R.C.

| | |
|-----------|----------------------|
| Sec. 6331 | 13 |
| 6332 | 14, 17, 25, A-4, A-5 |
| 6682 | 14, 16, 22, 23 |

| | |
|-----------------------------|----|
| Treasury Reg. 301.6332-1(c) | 14 |
|-----------------------------|----|

| | |
|------------|--------|
| H.J.R. 192 | 14, 27 |
|------------|--------|

| | |
|-------------|----|
| P.L. 95-147 | 15 |
|-------------|----|

TABLE OF AUTHORITIES

Federal Rules of Civil Procedure

| | |
|----------|--------------|
| R. 11 | A-1 |
| R. 12(b) | A-1, A-6 |
| R. 56(c) | 15, A-6, A-7 |

Supreme Court Rules

| | |
|----------|------|
| 28.4.(b) | A-11 |
| 17.1 | 20 |

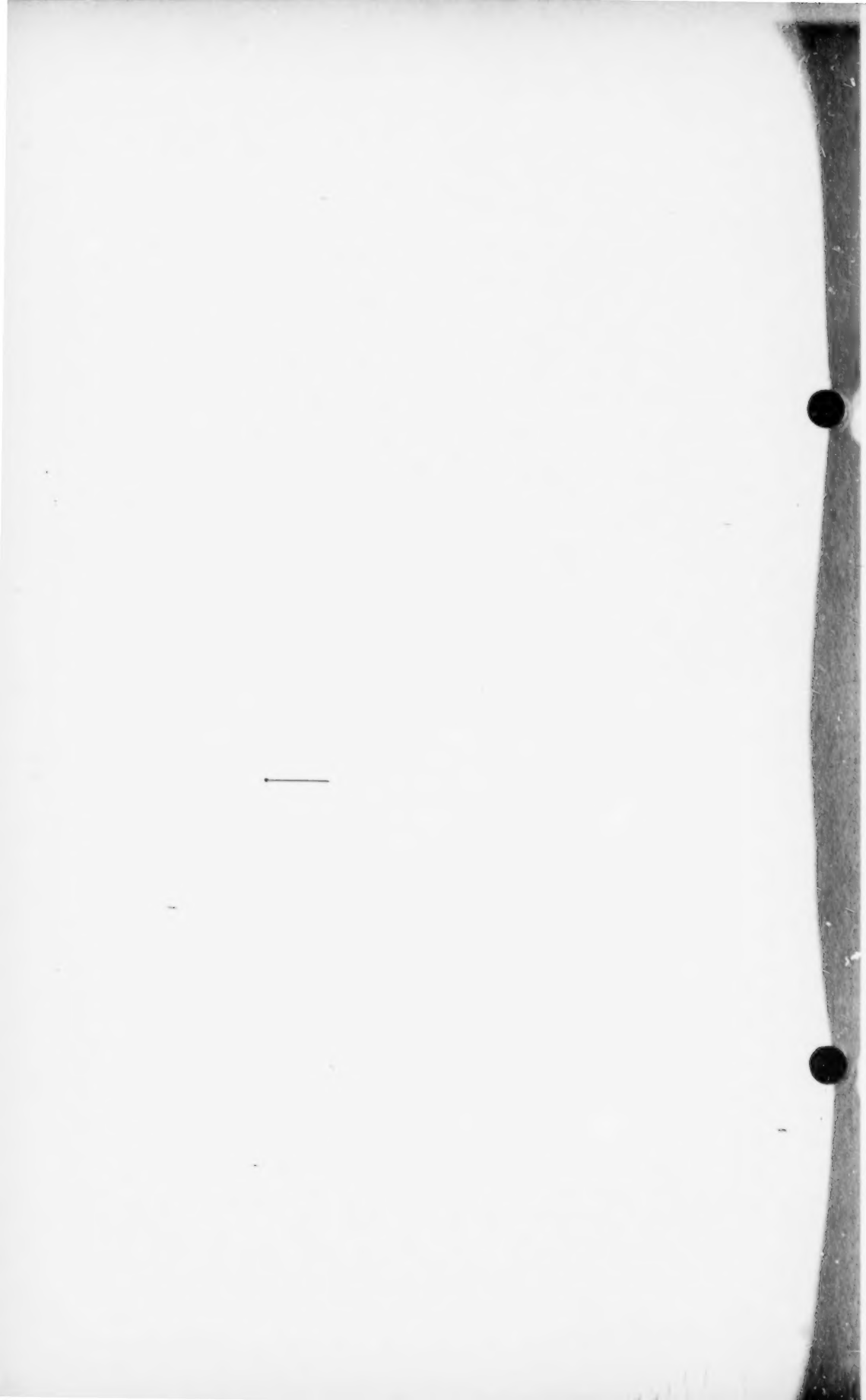
Cases

| | |
|--|------------|
| Boyd v. U.S., 116 U.S. 616 | 35 |
| Davis v. Scherer, 468 U.S. 183 | 6, 21, 35 |
| Evans v. Gore, 253 U.S. 245 | 5, 34 |
| Free v. Bland, 369 U.S. 663 | 22 |
| Hale v. Henkel, 201 U.S. 43 | 5, 34 |
| Mapp v. Ohio, 367 U.S. 643 | 35 |
| Massachusetts Mutual Life Insur. Co. v. Russell, 473 U.S. 134 | 5, 34, A-6 |
| Matsushita Elec. Ind. Co. v. Zenith Radio, 475 U.S. 551 | 22 |
| Phillips v. Commissioner, 283 U.S. 589 | 5, 33 |
| Pollock v. Farmers' Loan, 158 U.S. 601 | 5, 33 |
| Steward Machine Co. v. Davis 301 U.S. 548 | 29 |
| U.S. v. National Bank of Commerce, 472 U.S. 713 | A-5 |

TABLE OF AUTHORITIES

Non-Supreme Court Cases

| | |
|---|---------|
| Crausman v. Curtis Wright, 676 F Supp 1302 | 31 |
| Davis v. Boston & Maine R.R. Co., 89 F2d 368 | 29 |
| Le Blanc v. Shirey, 598 F Supp 747 | 23, A-5 |
| Fawlowske v. Chrysler Corp., 623 F Supp 569 | A-5 |



PARTIES

Plaintiff/Petitioner:

Richard Siegel
717 Lawn Ave.
Sellersville, Pa. 18960
A former worker at B&G Mfg.

Defendant

The Edmonds Co., Inc. Profit Sharing
Plan
3067 Unionville Pike
Hatfield, Pa. 19440

Profit sharing trust fund administered
for the benefit of employees of B&G and
at least two other companies

Defendant

The Edmonds Co., Inc.
3067 Unionville Pike
Hatfield, Pa. 19440

A Pennsylvania corporation; establisher
of the profit sharing trust fund (above)

Defendant

B & G Mfg. Co., Inc.
3067 Unionville Pike
Hatfield, Pa. 19440

A subsidiary of The Edmonds Co.; the
company at which petitioner worked

Defendant

The Administrative Committee of the
Edmonds Co., Inc. Profit Sharing Plan
3067 Unionville Pike
Hatfield, Pa. 10440

Responsible for management and day-to-
day operation of the trust fund

Defendant

Garfield J. Edmonds

% The Edmonds Co., (same address)

President of Edmonds Co. and B & G Mfg. Co.; administrator and trustee of the profit sharing plan

Defendant

Richard F. Edmonds

%The Edmonds Co. (same address)

Officer of The Edmonds Co.; Vice President of B & G Mfg. Co.; trustee of the profit sharing fund

Defendant

Walter Miller

% The Edmonds Co. (same address)

Trustee of the profit sharing plan

Defendant

Elaine Cassell

% B & G Mfg. Co. (same address)

Employee in charge of personnell dept. of B & G Mfg. Co.

REPORTS OF OPINIONS

Petitioner has been unable to locate reports in either the Federal Reporter or the Federal Supplement.

Copies of the orders of the district court and the Third Circuit appear in the

appendix to this petition. The opinion of the Third Circuit was one sentence, affirming the district court's orders.

GROUND'S OF JURISDICTION

The United States District Court entered its orders on January 19, 1989 and February 6, 1989. The United States Court of Appeals for the Third Circuit entered its Judgment Order, affirming the judgment of the district court, on June 14, 1989.

This Petition for Certiorari is being presented in accordance with 28 U.S.C., Sec. 2101 (c). It intends to bring before the Supreme Court for review the orders of the U.S. District Court, E.D., Pa. and of the U.S. Court of Appeals for the Third Circuit.

CONSTITUTIONAL PROVISIONS, STATUTES,
AND REGULATIONS INVOLVED IN THIS CASE

1. United States Constitution

Preamble:

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Art. I, Sec. 8.

The Congress shall have power:

1. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures;

Art. I, Sec. 9.4

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

Art. I, Sec. 10

No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin

Art. V

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the Ninth Section of the First Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the

same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIII

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Amendment XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

2. Social Security Act, Aug. 14, 1935
c 531, 49 Stat 620

(Petitioner begs leave of the court to be excused from reproducing the entirety of the Act.)

3. Retirement Income Security Act
P.L. 93-406
Sec. 502 (a) (3)

A civil action may be brought-
(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to

enforce any provisions of this title or the terms of the plan;

Sec. 404 (a) (1)

Subject to sections 403 (c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and-

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

4. Internal Revenue Code of 1954

Sec. 6331 (a)

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax...by levy upon all property and rights to property... belonging to such person

(b) ...Except as otherwise provided in subsection (d) (3), a levy shall extend only to property possessed and obligations existing at the time thereof.

Sec. 6332 (d)

Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection (c)(1) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment.

Sec. 6682 (a)

In addition to any criminal penalty provided by law, if-

- (1) any individual makes a statement under section 3402 or section 3452(f)(1)(A) which results in a decrease in the amounts deducted and withheld under chapter 24, and
- (2) as of the time such statement was made, there was no reasonable basis for such statement, such individual shall pay a penalty of \$500 for such statement.

Internal Revenue Service, Treasury Regulation
301.6332-1 (c)

...Any person who mistakenly surrenders to the United States property or rights to property not properly subject to levy is not relieved from liability to a third party who owns the property.

House Joint Resolution 192, June 5, 1933

73d Congress, Sess. I, Ch. 48, P.L. 10

... All coins and currencies of the United States (including Federal Reserve Notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all

debts, public and private, public charges, taxes, duties, and dues...

P.L. 95-147 October 28, 1977

The joint resolution entitled "Joint Resolution to assure uniform value to the coins and currencies of the United States" approved June 5, 1933 (31 U.S.C. 463), shall not apply to obligations issued on or after the date of enactment of this section.

Federal Rules of Civil Procedure

Rule 56 (c) Summary Judgment

Motion and Proceedings Thereon

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary judgment as a matter of law....

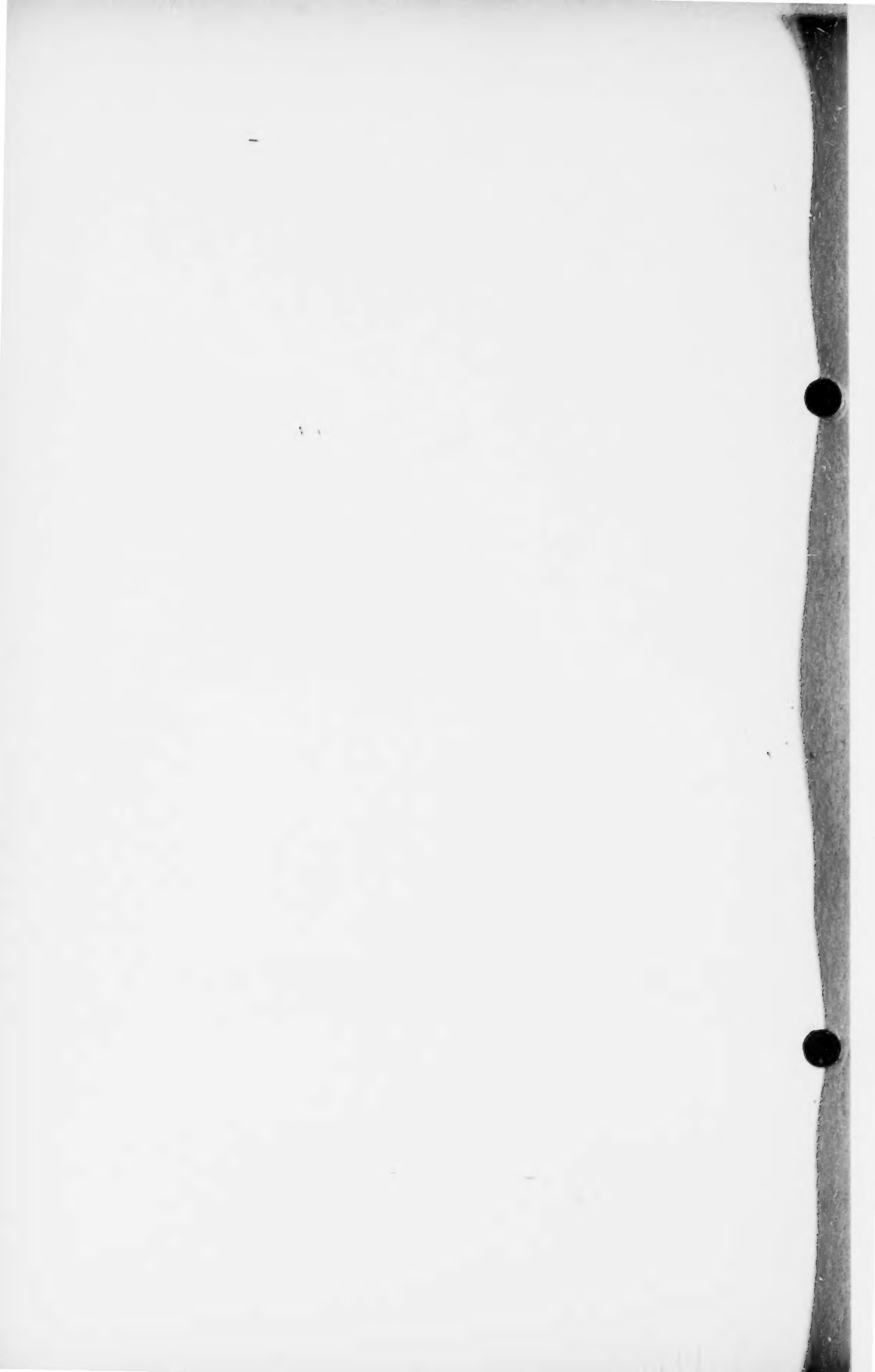
STATEMENT OF CASE

Petitioner/Plaintiff, a former employee in good standing of B&G Mfg. Co., filed a complaint in U.S. District Court, E.D., Pa. in March, 1988 alleging that defendants had unlawfully alienated 565.27 from him (part of his vested interest in the Edmonds

Co., Inc. Profit Sharing Plan). Defendants were responding to an I.R.S. Notice of Levy to collect a 500.00 penalty imposed on petitioner for alleged violation of I.R.C. Sec. 6682 (a). Exhibits in the complaint show that the petitioner has the standing of an individual outside the Social Security system and that there are errors in the levy.

The defendants were given some documents by the petitioner pointing out errors and possible inequities in the levy procedure to collect a civil penalty. Defendants agreed to send some of these documents to the I.R.S. and request explanation before alienating petitioner's profit sharing funds. Then, several weeks later, defendants hastily and unreasonably sent petitioner's funds to the I.R.S.

Plaintiff contended in his complaint that these injuries and grievances are litigable under ERISA, U.S. Constitution and



torts: unlawful alienation of pension funds; breach of fiduciary duties; unlawful conversion; negligence; denial of due process of law. Plaintiff demanded restitution, compensatory and punitive damages, court costs, and pro se attorney's fees.

Opposing counsel has used the issue of immunity (I.R.C. 6332 (d)) as the defense in this case.

In June, 1988 defendants filed motion to dismiss, based on the immunity statute. This motion was not ruled on until the final disposition of the case, January, 1989. Plaintiff filed a motion for summary judgment in July, 1988, which was denied. Defendants in their response to this motion deny agreement on the facts. Plaintiff then filed answer to defendants' motion to dismiss.

On October 18, 1988 district court Judge DuBois held a status conference for the case and directed petitioner to write a supplemental response to defendants'

motion to dismiss, dealing with the issues of the legality and authority of the levy. Petitioner filed this response November 5. It remains, in his belief a very important document in this case. On October 19, the district court issued a scheduling order covering preparations, date of trial, etc.

Then, January 10, 1989, at a "settlement" conference requested by defendants' counsel, Judge DuBois removed the case from the trial list in expectation of allowing additional preparation for expected eventual trial (defendants would answer plaintiff's complaint, etc.).

As a result of the Jan. 10 conference, the district court realized it must rule on defendants' June, 1988 motion to dismiss. The court ruled, utilizing summary judgment procedure, and granted the motion to dismiss, with no sanctions on plaintiff. Plaintiff then filed motion for new trial with accompanying brief. Denied, Feb. 6, 1989.

Petitioner then appealed to U.S. Court of Appeals, 3d Circuit, March, 1989. Defendants cross-appealed for the imposition of sanctions on petitioner. Petitioner submitted main and reply briefs; defendants submitted main brief. Case was heard by 3d Circuit, May 25, 1989. The 3d Circuit entered its one-sentence judgment of affirmation of the district court's judgment, June 14, 1989.

BASIS FOR ORIGINAL JURISDICTION
OF THE DISTRICT COURT

The case was brought under the jurisdiction of the U.S. District Court, E.D., Pa. by virtue of the involvement of claims under ERISA (29 U.S.C., Sec. 1001 et. seq.).



REASONS FOR GRANTING THIS PETITION

Several of the criteria mentioned in the Supreme Court rule concerning considerations governing review on certiorari (Rule 17.1 (a) and (c)) are present in this case: departure from usual judicial proceedings; decisions on important questions of federal law which should be decided by the Supreme Court; and rulings in conflict with applicable decisions of the Supreme Court. All the Questions for Review, above, relate to these criteria.

As can be seen by the 3d Circuit's decision, the treatment of the case by the district court is affirmed. Therefore, all reversible errors, erroneous or omitted rulings, and conflicts with Supreme Court decisions which this argument will mention apply to both the district and appellate courts.

The issues raised in this petition have already, specifically or by implication, been raised in the courts below. As in most



cases, there is often interrelationship of issues, so that many questions will fall into more than one category.

I Issues of Procedure

One of the petitioner's basic grievances has been the absence of due process of law. Documentation in the case record shows that there is evidence of error and illegality in and surrounding the levy. Petitioner believes that at the very least, if it was not obvious enough from documents, the district court should have conducted a hearing into the issue concerning the levy. To determine the petitioner's status from his recision document and from the levy seems too obviously to beg questions and avoid responsibility to conduct a hearing. It remains true that, in spite of his undisputed status, the petitioner has not to this day received that most basic element of due process, a hearing (Davis v. Scherer, 468 U.S. at 202).

It also appears remarkable to the pe-

itioner that summary judgment procedure could be utilized when defendants are on record as denying agreement with plaintiff's factual allegations! Therefore, how could defendants' motion properly be treated as a motion for summary judgment?

Matsushita Elec. Ind. Co. v. Zenith Radio, 475 U.S. at 551, 552, holds that the party moving for summary judgment has a burden under Rule 56 (c) to demonstrate the absence of genuine issues of fact. Plaintiff did raise important issues for trial in his Supplemental Response (such as the impossibility of the penalty in question complying with I.R.C., Sec. 6682). The Supreme Court also ruled in Free v. Bland, 369 U.S. 663, that controverted allegations could only be resolved by trial on the merits, not summary judgment.

The question also arises: did the district court err in failing to reach ERISA issues? Is ERISA within the jurisdiction of equity? In what jurisdiction is a levy?



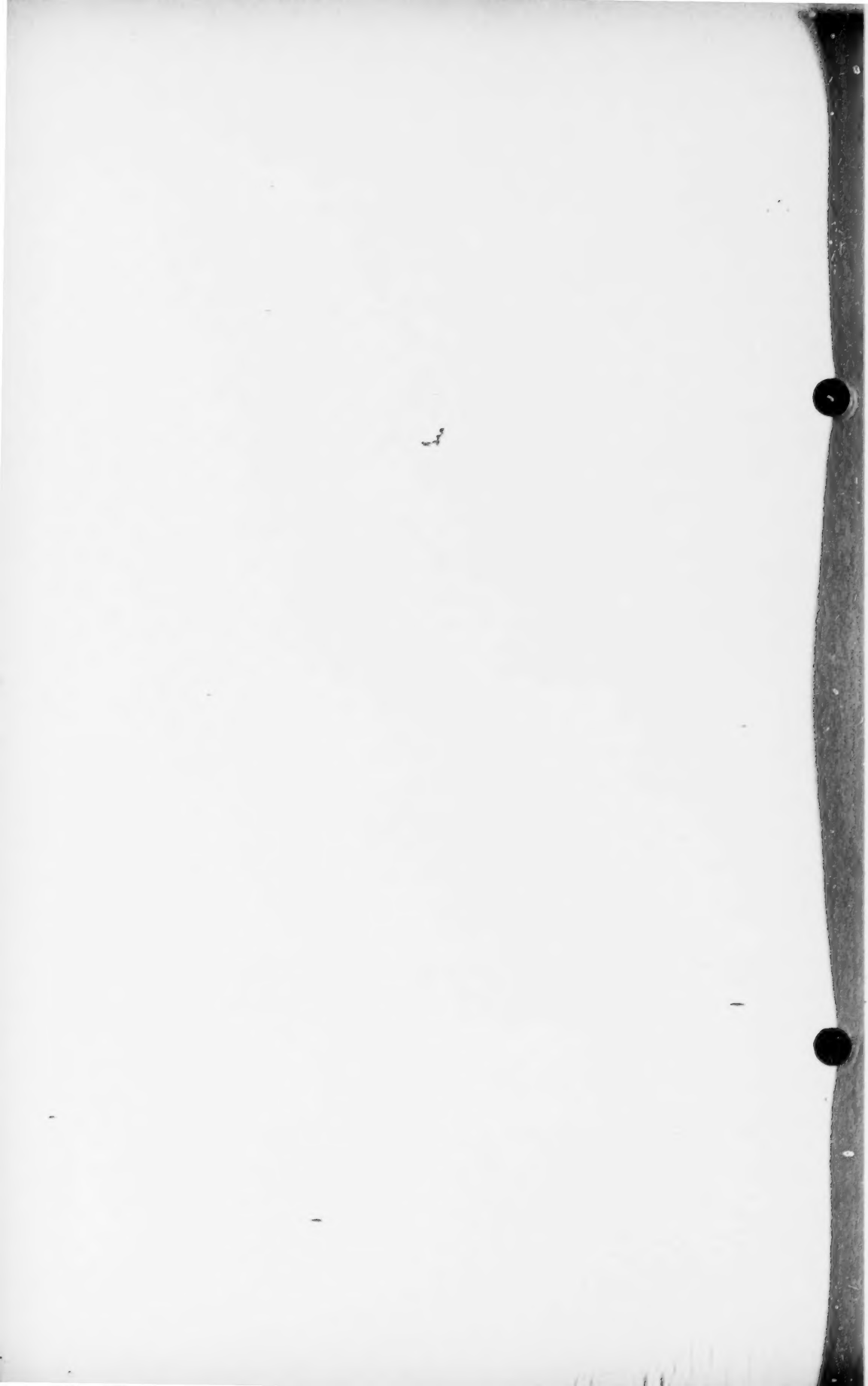
Are we dealing with jurisdictional conflict of laws?

II The Issue of the Penalty

The petitioner has argued that there is a clear distinction between a penalty and a tax (Le Blanc v. Shirey, 598 F Supp 747). A penalty must be imposed with constitutional guarantees. There needs to be a Supreme Court ruling on whether a penalty alone can be levied - especially when the penalty does not fulfil the conditions of the law which prescribes it. The applicable law in this case is I.R.C., Sec. 6682 (a). And, as previously pleaded, it is impossible in the instant case for the requirements of this section to be met. Therefore the penalty was unlawfully imposed; and petitioner contends that hence the levy is unlawful.

The question now arises: Does an unlawful levy convey any authority? To even ask this question should be to answer it.

III The Levy



III The Levy

Is it an unauthorized departure from usual judicial procedure to honor an unlawful levy?

The following conditions would seem to be necessary for a proper levy:

1. The person levied against must be under the jurisdiction of the statute;
2. There must be revenue involved;
3. There must be lawful assessment;
4. The taxpayer must be liable for the tax;
5. The levy must be properly addressed;
6. There must be property or rights to property levied upon;
7. This property must exist at the time of the levy;
8. The proper custodian must be named;
9. The proper custodian, or someone under the authority of the custodian, must respond.

Where these conditions are not met, is there a proper levy?

Did the defendants have the legal stand-



ing to respond to the levy? The levy was addressed to B&G Mfg. Co., at a non-existent address. But it was not B&G who responded. And it was not someone under B&G's authority who responded. The response was made by the profit sharing trust fund, which has obligations under ERISA to refrain from unlawfully alienating the funds of participants.

The statute being used by the defendants to claim immunity is I.R.C., Sec. 6332 (d). This section speaks of "property or rights to property subject to levy upon which levy has been made." It becomes imperative for us, under the adjudication by this Supreme Court, to decide the meaning of this phrase. How is it communicated that a specific item has a levy made on it? We must also decide what it is to be a "subject" of a levy.

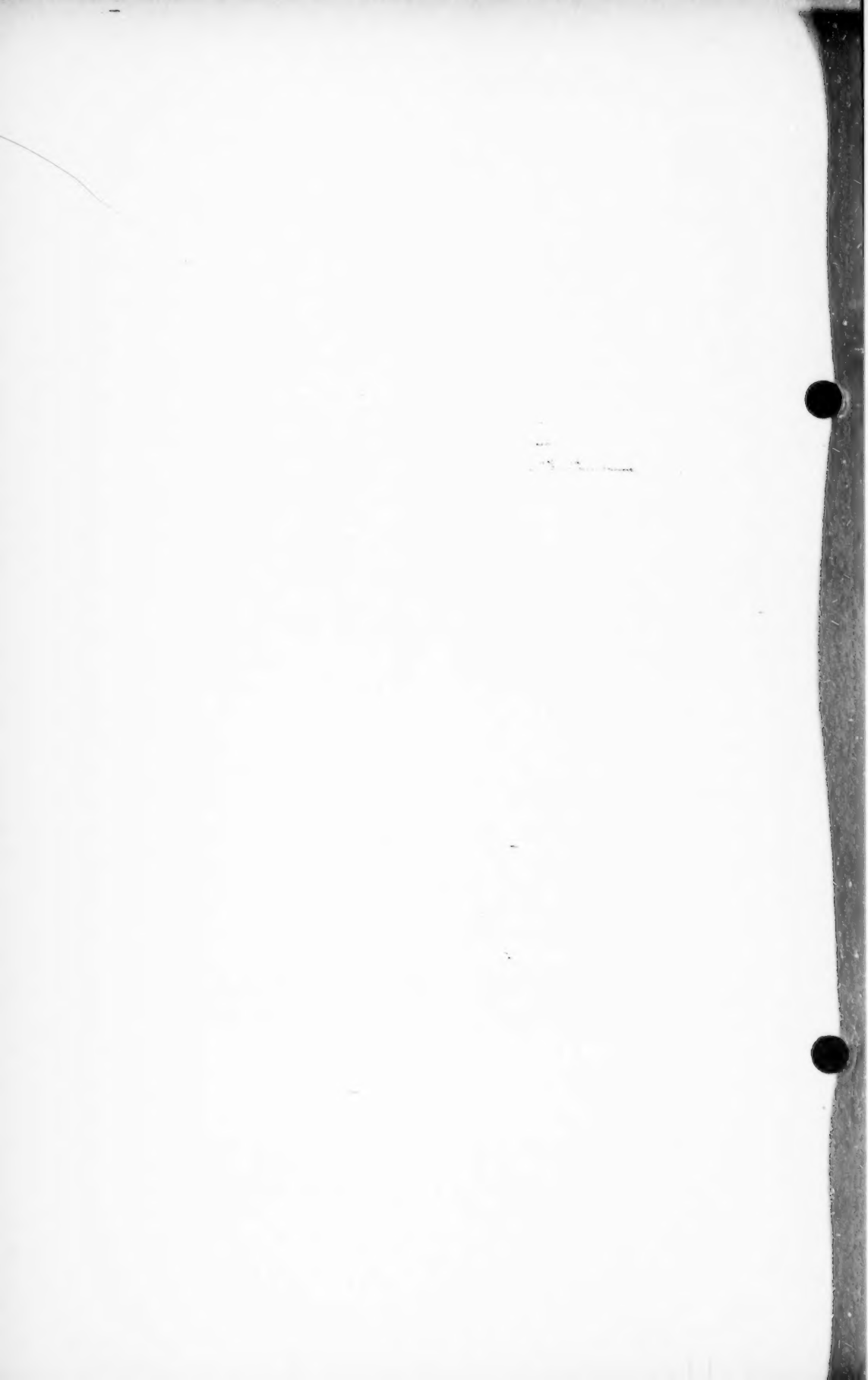
The petitioner contends that the grant of immunity has in this case been erroneously applied to those who are not subjects of the levy, nor are they under the authority

of those who are subjects of the levy. The most serious defect in the application of the grant of immunity to the instant case is that it is not in relation to a delinquent taxpayer, for reasons argued above, under the penalty issue, and for reasons concerning the petitioner's status, argued below.

The results of the unlawful honoring, by respondents with no standing, of the improper levy, attempting to collect an unlawfully imposed penalty have been: unlawful alienation of funds protected under ERISA and violation of petitioner's rights under the 5th Amendment.

IV Acts of Congress

The petitioner has already in this case raised the issue of irredeemable notes. Respectfully, I realize that this issue is taboo in many courts; but I contend that it represents a great watershed in the history of our currency and that we must, explicitly and overtly, distinguish between redeemable

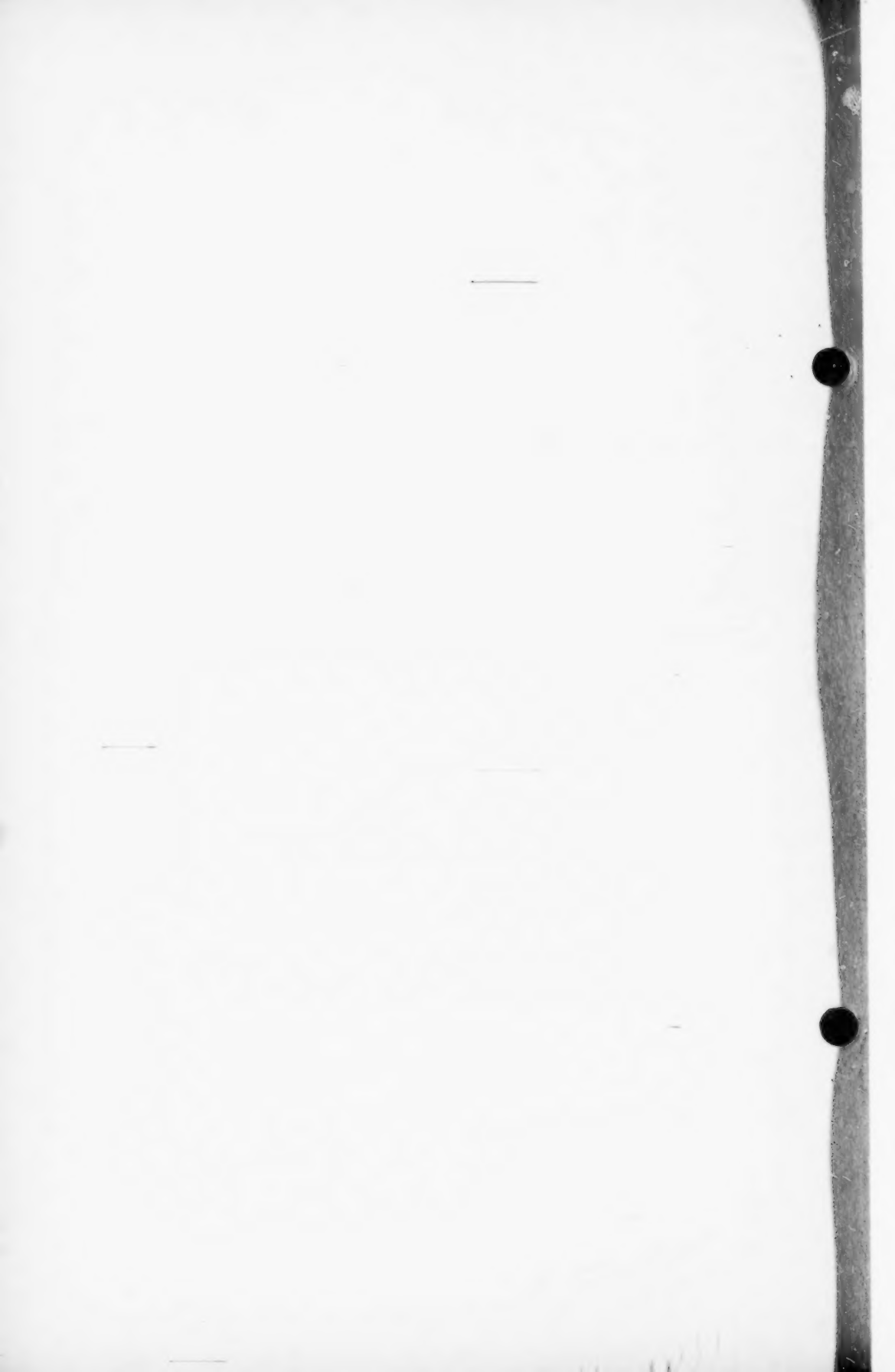


and irredeemable paper.

The history of legal tender cases is well known to jurists. Julliard v. Greenman, 110 U.S. 421, is a landmark decision under this category. But it must be observed that Julliard did not grant legal tender status to irredeemable notes.

H.J.R. 192 (June 5, 1933) granted legal tender status to (redeemable) Federal Reserve Notes. But P.L. 95-147 took this status away. For this and other reasons the petitioner has argued that irredeemable notes do not convey rights to property; they are not even choses in action, because, pursuant to P.L. 95-147, they can be refused by anyone! This is what gives rise to the liberty/property issue already pleaded in this case. This issue cries aloud for honest adjudication. Petitioner believes it is clear that irredeemable notes do not compel money into the treasury.

Obviously, in this present case the ERISA statute figures prominently. I believe we must answer the question of whether



a person can be excused from his ERISA responsibilities by an improper Notice of Levy. If lawful assessment is a condition precedent to statutorily authorized levy, can the statute in which this essential precedent condition is described (I.R.C.) preempt another statute (ERISA) in a situation where the required precedent condition has not been met?

V Constitutional Issues

There are several constitutional issues in this case: was the petitioner deprived of liberty without due process of law? Under the circumstances surrounding the penalty in this case, has there been, or could there be, due process of law? Has the petitioner, by the decisions of the lower courts, been denied due process of law? It seems that the most appropriate time at which to examine the levy in this case would have been right after it was ordered to be made the topic of inquiry of the plaintiff's Supplemental Response. But no hearing was ever held.

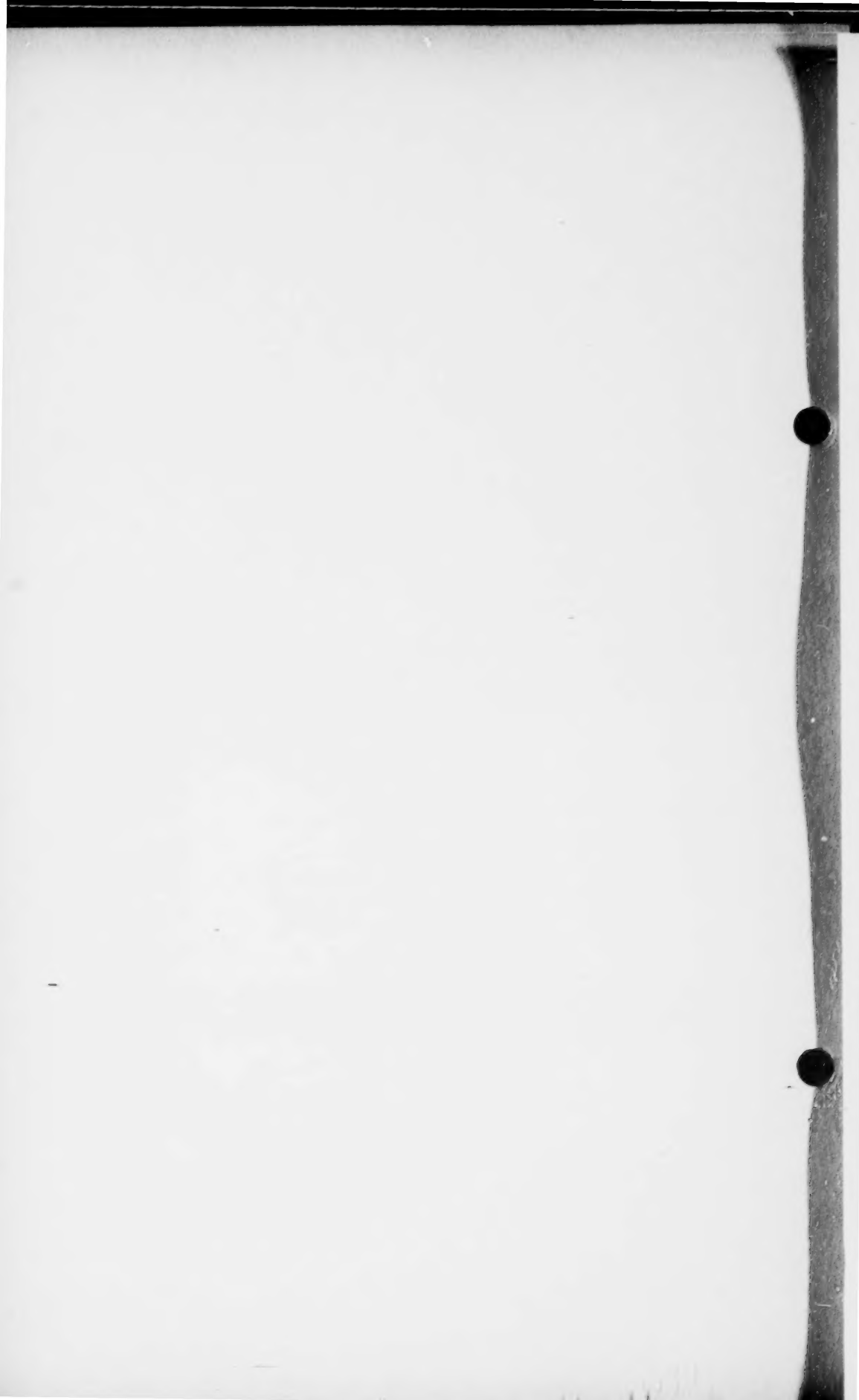


Amendment XIII to the U.S. Constitution is another provision applicable to certain aspects of this case.

There is also an issue concerning the constitutionality of the Social Security Act. This is in relation to the petitioner's right to have rescinded his Social Security number (see below, under Status). The situation concerning Social Security is an instance where there is a conflict between two circuit courts - 1st and 5th. There are still aspects which have not been adjudicated by the Supreme Court. Compare Davis v. Boston & Maine R.R. Co., 89 F2d 368, with Steward Machine Co. v. Davis, 301 U.S. 548.

VI Issues of Fraud

By requiring employees to execute new W-4 forms under circumstances other than those designated in the Federal Register for the proper procurement of withholding certificates, B&G Mfg. Co. committed fraud. It was



against this background that the pretext arose in which the unlawful penalty in this case was imposed.

Another fraud issue arose when defendants, with knowledge of errors and illegality of the levy nevertheless honored it, to the injury of the petitioner.

Thirdly, as stated in the complaint and elsewhere, defendant Garfield Edmonds accepted documents from plaintiff and promised not to alienate plaintiff's funds until receiving I.R.S.' answer to these documents. The unreasonable subsequent alienation of pension funds without receiving an answer constitutes constructive fraud, evidenced by breach of personal confidence.

Fourthly, and unfortunately, there is massive fraud in connection with the alleged ratification of the 16th Amendment. As petitioner, I would hesitate to raise this issue if there were not significant evidence to support the claim. The Feb. 15, 1913 memorandum by the Solicitor for the U.S.

Department of State (on file in the National Archives) was submitted by the petitioner with his Supplemental Response. This memorandum reveals numerous irregularities concerning the proclamation of ratification.

Finally, there is the issue of employer fraud under ERISA. Crausman v. Curtis Wright (D.C., N.J., 1988), 676 F Supp 1302, states,

"Save for limited exceptions spelled out in the statute, ERISA bars all forfeitability of vested pensions. It makes no distinction between small frauds and large ones, and neither may this court."

The petitioner would appreciate a Supreme Court ruling on whether an employer may fraudulently create conditions and commit fraudulent and unlawful acts, based on these conditions, which deprive a plaintiff of statutorily (ERISA) protected rights.



VII Status

The petitioner, having rescinded his Social Security number in 1981, holds the status of being outside the Social Security system and a non-juristic person federally. This status has been frequently referred to in this case and has not been challenged by the defendants. Petitioner's appellate reply brief contains material under this head.

I would say here that some of the most deeply held religious tenets, the holding of which is a constitutionally protected right, now come into play. Beliefs such as the possibility of eternal punishment, while certainly not made a part of any congressional statute, nevertheless are protected by Article I of the Bill of Rights. And it is interesting that the constitutional convention took strong religious beliefs into consideration when Mr. Read remarked that "the words, if not struck out, would be as alarming as the mark of the Beast in Revelation." (James Madison, Notes of Debate

in the Federal Convention of 1787 (Athens, Ohio: Ohio U. Press, 1966). For this and other related reasons the petitioner asserts his right to remain outside Social Security.

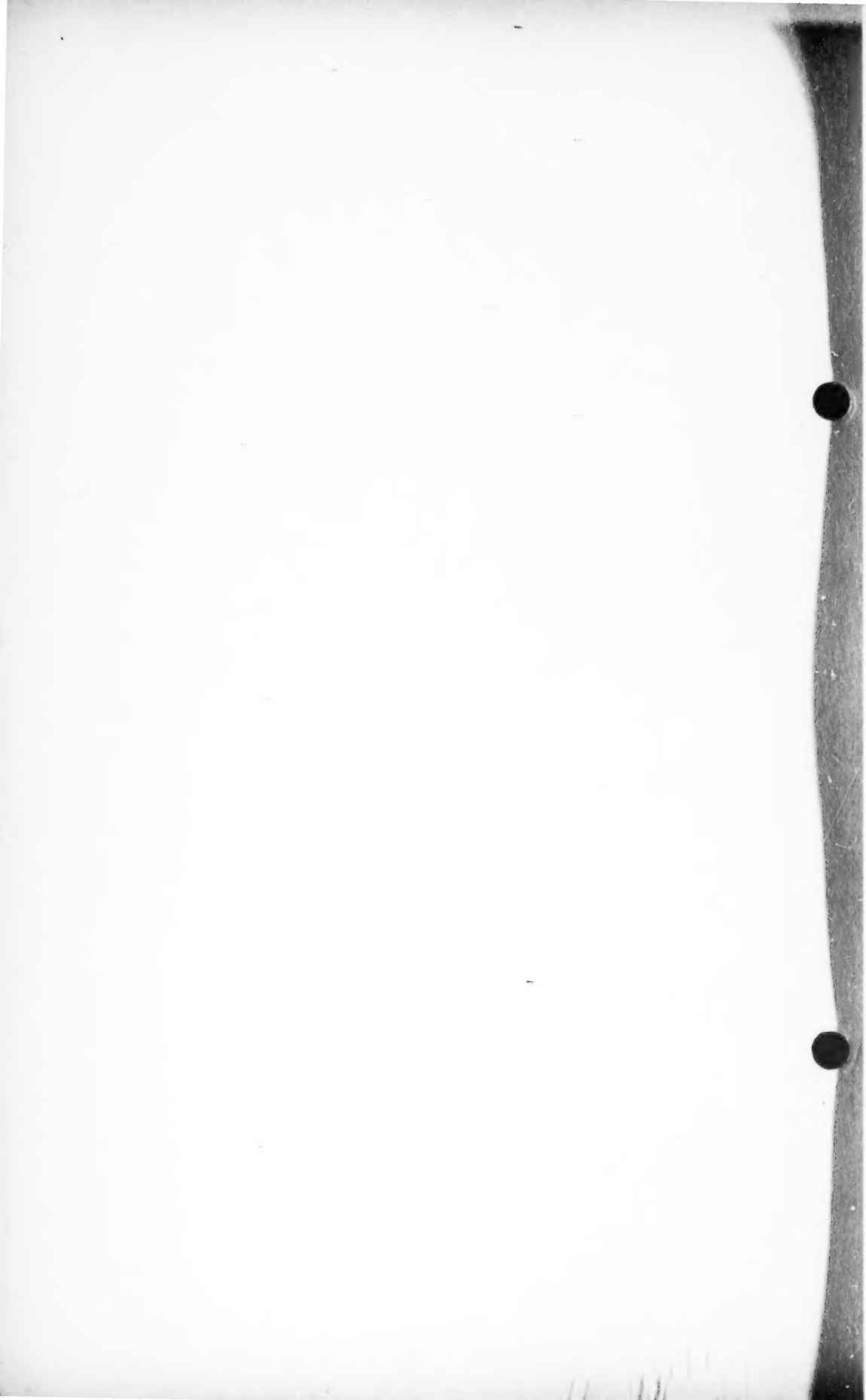
VIII Applicable Supreme Court Decisions
in Conflict with the Treatment of
this Case

1. Phillips v. Commissioner, 283 U.S. 589, 596

Here the principle is held that the justification for levies is the need of the government to promptly secure its revenues. But this is not true of a penalty.

2. Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429

This case mandates that direct taxes on such items as revenues from property, be apportioned in accordance with the Constitution. It was to circumvent this decision that the 16th Amendment was proposed.



3. Evans v. Gore, 253 U.S. 245

Held here is the principle that the 16th Amendment does not justify the taxation of persons or things previously immune.

4. Massachusetts Mutual Life Insurance Co. v. Russell, 473 U.S. 134

The rulings concerning the extra-contractual and punitive damages rights of victims of ERISA violations need to be completed. The court here ruled against the awarding of these damages - but only in certain circumstances. The present case presents a situation ripe for a ruling under other circumstances.

5. Hale v. Henkel, 201 U.S. 43

There are certain rights and a status attaching to individuals which have their foundation in "the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law."



6. Davis v. Scherer, 468 U.S. 183

The right to be heard before being condemned to suffer grievous loss of any kind is central in this case.

7. Mapp v. Ohio, 367 U.S. 643

This case holds that evidence obtained by invasions into areas protected by constitutional guarantees is inadmissible. Mapp, quoting Boyd v. U.S.,

116 U.S. 616, 630, says,

"...any forcible and compulsory extraction of a man's own testimony ... is within the condemnation."

That is how this case began: extraction of information under duress. And that is why no due process of law could result where that initial extraction was rationalized or ignored at every step.

The petitioner pleads with this honorable court, because of the questions, arguments, and grievances described above,

to grant certiorari.

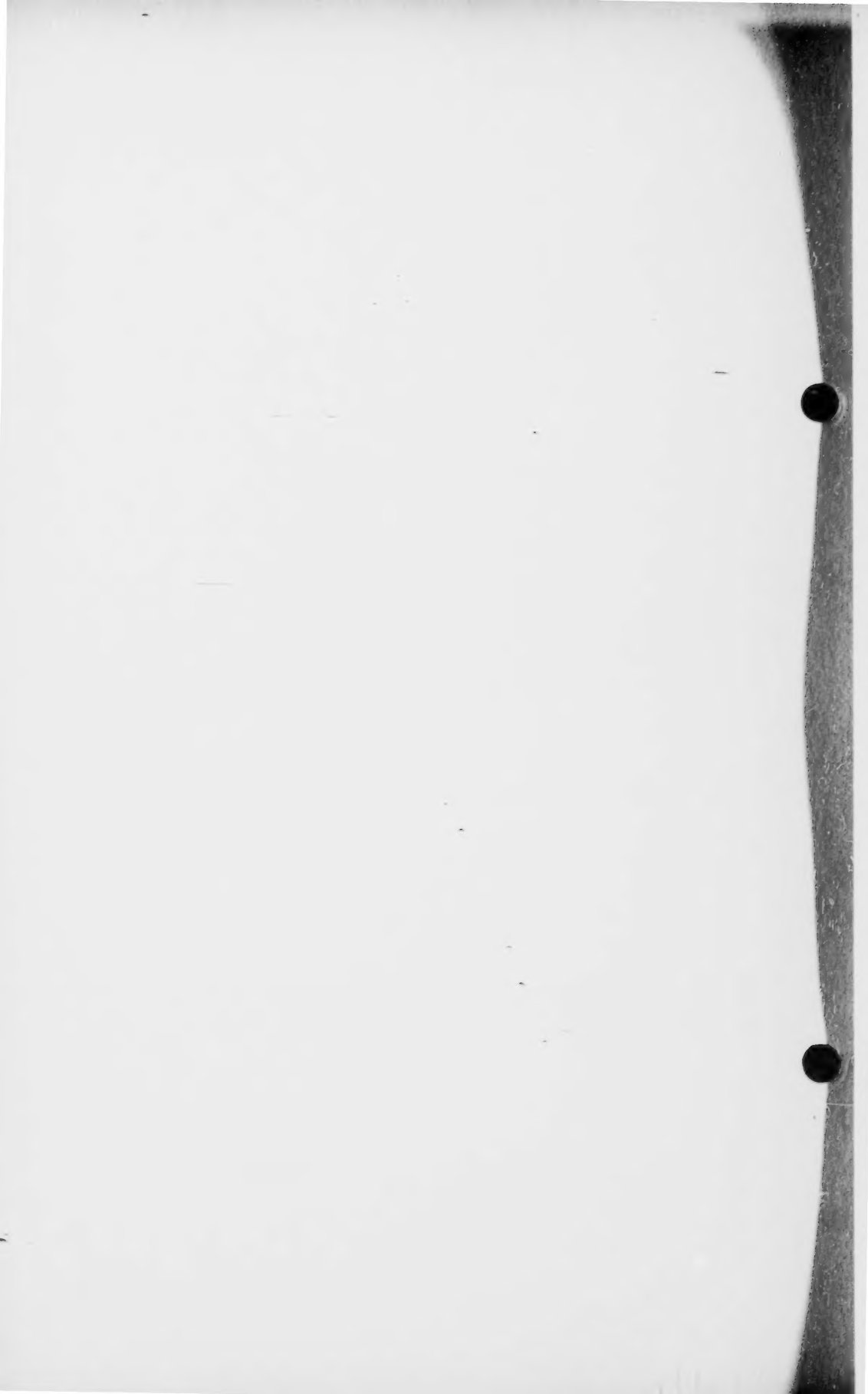
Thank you.

Sincerely and respectfully submitted,

Richard Siegel

Richard Siegel, Pro Se
717 Lawn Ave.
Sellersville, Pa. 18960

Dated August 3, 1989



APPENDIX

(Following, below, is a reproduction of the district court's Memorandum and Order, 1-19-88)

In the U.S. District Court, E.D., Pa.

Richard Siegel

No. 88-2424

v.

The Edmonds Co., Inc. Profit Sharing Plan,
et al.

Memorandum and Order

DuBois, J.

I have before me Defendants' Motion to Dismiss, pursuant to Fed. R. Civ. P. 12 (b) (6) and for Sanctions pursuant to Fed. R. Civ. P. 11. Because in ruling on the Motion I must consider an exhibit outside the pleadings, as provided in Rule 12(b) I will treat the motion as one for summary judgement. I will not impose sanctions.

Findings of Fact

1. For a period of time ending on or about Jan. 3, 1985, plaintiff was employed by B&G Mfg. Co., a subsidiary of The Edmonds Co., Inc. of Hatfield, Pa. (Complaint, Section III, Parties, Par. 1 and 3 and Section IV, FACTUAL ALLEGATIONS, Par. 1).

2. On or about Jan 9, 1986, plaintiff,



by virtue of his employment with B&G Mfg. Co., had a vested interest amounting to approximately \$7300.00 in the Edmonds Co. Inc. Profit Sharing Plan ("Plan") (Complaint, Section III, PARTIES, par. 1 & 3, and Section IV, FACTUAL ALLEGATIONS, par. 1 & 2).

3. The Plan was a qualifying plan under the Employment Income Security Act...

4. On or about Jan. 9, 1986 defendants, in their several capacities were, directly or indirectly, persons in possession of (or obligated with respect to) plaintiff's interest in the Plan (Complaint, Section III, PARTIES, par. 1 through 9, and Section IV FACTUAL ALLEGATIONS, par. 2).

5. Plaintiff's Social Security and Taxpayer Identification Number is 137-30-7024 (Exhibit A to plaintiff's Supplemental Response to Defendants' Motion to Dismiss filed Nov. 9, 1988).

6. On or about Jan. 9, 1986, defendants were served with an Internal Revenue Service

Form 668-A, Notice of Levy, dated "1-9-86" ("Notice of Levy") addressed to B & G Mfg. Co., Inc, and demanding payment of \$565.24 to be made from "All property, rights to property, money, credits and bank deposits now in your possession and belonging to this taxpayer...(Exhibit A to Complaint).

7. The taxpayer identified in the Notice of Levy was Richard Siegel, Taxpayer Identification Number 137-30-7024 (Exhibit A to Complaint).

8. The Notice of Levy, on its face, was in proper form (Exhibit A to Complaint).

9. On or about January 10, 1986, defendants Garfield J. Edmonds and Richard F. Edmonds, signed a check, dated January 10, 1986, drawn on "The Edmonds Co. Inc., Profit Sharing Trust" payable to "Internal Revenue Service" in the amount of \$565.27 (Complaint Section IV, FACTUAL ALLEGATIONS, par. 4 and Exhibit B).

10. The aforementioned check was mailed

to the Internal Revenue Service on Feb. 17, 1986 (Complaint, Section IV, FACTUAL ALLEGATIONS, PAR. 10).

CONCLUSIONS OF LAW

1. On or about Jan. 9, 1986, the defendants were, in their several capacities, persons in possession of (or obligated with respect to) property or rights to property of the plaintiff subject to levy by the Internal Revenue Service, within the meaning of 26 U.S.C. 6332 (a) (1967), namely his interest in the Plan.

2. The Notice of Levy was valid and enforceable.

3. The fact that the Notice of Levy was directed to B&G Mfg. Co., Inc., plaintiff's former employer, instead of the Profit Sharing Plan or the trustees, is of no legal significance.

4. Service of the Notice of Levy on B&G Mfg. Co., Inc., a subsidiary of The Edmonds Co., Inc. was sufficient to reach the assets of the plaintiff in the Edmonds

Co., Inc. Profit Sharing Plan.

5. The defendants, in their several capacities were legally obliged to pay to the Internal Revenue Service \$565.24 out of plaintiff's interest in the Plan, pursuant to 26 U.S.C., Sec. 6332 (a) and (c) (1967). See U.S. v. National Bank of Commerce, 472 U.S. 713...(1985)

6. The payment made by defendant by the check dated January 10, 1986, was legally made in response to the Notice of Levy.

, 7. the defendants, in their several capacities, having made the payment to the Internal Revenue Service pursuant to the Notice of Levy, are discharged from any liability to plaintiff with respect to that payment, pursuant to 26 U.S.C. Sec. 6332 (d) (1967). See Pawlowski v. Chrysler Corp., 623 F. Supp. 569, 570 (N.D. Ill. 1985) and LeBlanc v. Sherry, 598 F. Supp. 747, 752 (E.D. Tex 1984).

8. The defendants are not liable to

plaintiff under ERISA for consequential or punitive damages in respect to such payment. See Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134...(1985).

Order

AND NOW, to wit, this 18th day of January, 1989, upon consideration of the Motion of defendants...to Dismiss...and for Sanctions ...and the Replies of plaintiff..., and good cause appearing, IT IS ORDERED:

1. That the Motion...to Dismiss...will be treated as one for Summary Judgment pursuant to Fed. R. Civ. P. 56;

2. That the Motion of defendants...to Dismiss pursuant to Fed. R. Civ. P. 12(b) (6), treated as a Motion for Summary Judgment, is granted;

3. That Summary Judgment is entered in favor of defendants... and against plaintiff

4. That the Motion of the defendants... for Sanctions is denied.

(Following, below, is a reproduction of the district court's order of Feb. 2, 1989)

In the U.S. District Court, E.D., Pa.

Richard Siegel

No. 88-2424

v.

The Edmonds Co., Inc. Profit Sharing Plan,
et al.

Order

AND NOW, to wit, this 2nd day of Feb., 1989, upon consideration of the Motion of Plaintiff...for New Trial, IT IS ORDERED that the Motion of plaintiff...is denied on the ground that all issues in the case were adjudicated by Memorandum and Order dated January 18, 1989, in which Motion to Dismiss...was granted pursuant to Fed. R. Civ. P. 56 and summary judgment was entered in favor of the said defendants and against plaintiff...and on the ground that the said plaintiff, in his Motion, has raised no issue of fact or law not considered by the Court in ruling on defendants' motion.

JAN E. DUBOIS, J.

(Following, below is reproduction of the
appeals court order of June 14, 1989)

United States Court of Appeals for the
Third Circuit

Nos. 89-1156 & 89-1188

SIEGEL, RICHARD, Appellant

v.

THE EDMONDS CO., INC. PROFIT SHARING
PLAN, et al.

Appeal from U.S. District Court, E.D., Pa.
D.C. Civil Action No. 88-2424

Submitted under 3d Circuit Rule 12(6)
May 25, 1989

Before: Higginbotham, Sloviter and Nygaard,
Circuit Judges

JUDGMENT ORDER

After consideration of all contentions
raised by appellant, it is ADJUDGED AND
ORDERED that the judgment of the district
court be and^{is} hereby AFFIRMED. Costs taxed
against appellant.



(Following, below, are excerpts from petitioner's recision of his Social Security number. This recision was notarized and read by defendant Garfield J. Edmonds, July 21, 1981.)

Affidavit

Denial and Nullification of Social Security Account/Number/ Benefits/Franchise

I, Richard Siegel...do affirm and say

1. That under pains and penalty of perjury, the statements herein are true and correct in entirety and;
2. That I am in no way knowingly, willingly, voluntarily nor intentionally enfranchised by any government nor body of law nor governmental entity, and I reject and denounce and otherwise refuse all such benefits, gifts, enfranchisements, licenses and programs, associated withholdings and condemnations.
3. That if a Social Security Number/Account was assigned me, it was done so while I was a minor, and or against my will then and now,



absent intent, unknowingly, involuntarily, absent consent and to my damage, against my best interest, a result of fraud, coercion, duress, undue influence, misrepresentation or mistake of fact and other invalidating causes....

5. That from the beginning, now and in the future, to participate in any social security program or like program or to have assigned to me a related account or number or to receive benefits is and always has been and will be VIOLATIVE of my religious practices and beliefs and my conscience; is, was and will be CONTRARY to all my past, present, and foreseeable interests and intent...

JURAT: I Garfield J. Edmonds, Notary Public ...witness on this day that one known to me to be Richard Siegel did personally appear before me, and did execute the above affixed signature to this instrument.

(Signed)
Garfield J. Edmonds

STATEMENT PURSUANT TO SUPREME
COURT RULE 28.4. (b)

In pursuance of Rule 28.4. (b), the petitioner hereby declares that constitutionality of an act of Congress is drawn in question by this Petition for Certiorari. Therefore, 28 U.S.C. , Sec 2403 (a) may be applicable.

The petitioner is not aware of any previous notice of this fact being certified to the Attorney General. Petitioner believes the 3d Circuit Court did not serve such notice.

Certificate of Service

RICHARD SIEGEL, Petitioner, hereby certifies that a true and correct copy of the ^{(3 copies) RS} foregoing Petition for Certiorari was mailed, first-class, postage prepaid to Counsel of record for respondents:

Ricardo J. Nunez, Esq.
Duane, Morris & Heckscher
1500 One Franklin Plaza
Philadelphia, Pa. 19102

Date Aug. 4, 1989

I further certify that counsel listed above represents all of the defendants in this case. List of defendants follows:

The Edmonds Co., Inc.
The Edmonds Co., Inc. Profit Sharing Plan
B & G Manufacturing Co., Inc.
Administrative Committee of the Edmonds
Co., Inc. Profit Sharing Plan
Richard F. Edmonds
Garfield J. Edmonds, Jr.
Walter Miller
Elaine Cassell

All defendants may be addressed
% The Edmonds Co., Inc.
3067 Unionville Pike
Hatfield, Pa. 19440

Signed

Richard Siegel
Richard Siegel

CERTIFICATE OF SERVICE

RICHARD SIEGEL, Petitioner, hereby certifies that a true and correct copy of the foregoing Petition for Certiorari was mailed, first-class, postage prepaid to:

Solicitor General
Dept. of Justice
Washington, D.C. 20530

Dated Aug. 4, 1989 Signed Richard Siegel
Richard Siegel